

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-7346

In The  
**United States Court of Appeals**  
For The Second Circuit

JOSEPH BOSSOM,

*Plaintiff-Appellant,*

vs.

NAOMI BOSSOM and STANLEY E. KOOPER,

*Defendants-Appellees.*

*On Appeal from an Order from the United States District Court  
for the Eastern District of New York.*

## APPENDIX FOR APPELLANT

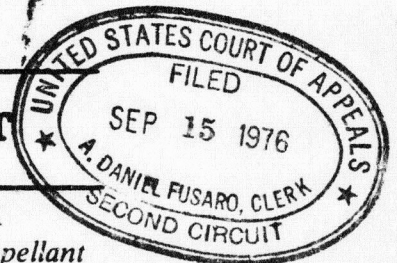
GELBWAKS & POLLACK

*Attorneys for Plaintiff-Appellant*

299 Broadway

New York, New York 10007

(212) 732-2540



(9937)

LUTZ APPELLATE PRINTERS, INC.

Law and Financial Printing

South River, N.J.

(201) 257-6850

New York, N.Y.

(212) 563-2121

Philadelphia, Pa.

(215) 563-5587

Washington, D.C.

(201) 783-7288

PAGINATION AS IN ORIGINAL COPY



# TABLE OF CONTENTS

	Page
Docket Entries .....	A
Notice of Motion for Summary Judgment (Filed May 4, 1976) .....	1a
Affidavit of Joseph Bossom in Support of Motion .....	3a
Affidavit of I. Miles Pollack in Support of Motion .....	8a
Complaint (Filed August 28, 1975) .....	12a
Stipulation .....	18a
Escrow Agreement .....	22a
Answer of Naomi Bossom (Filed September 22, 1975) .....	23a
Answer of Stanley E. Kooper (Filed September 22, 1975) .....	25a
Notice of Cross Motion for Dismissal of Complaint (Filed May 14, 1976) .....	27a
Affidavit of Stanley E. Kooper in Support of Cross Motion to Dismiss .....	28a
Affidavit of Bernard J. Jaffe in Opposition to Cross Motion for Dismissal .....	31a
Memorandum and Order by Constantino, D.J. (Filed June 1, 1976) .....	34a

## DOCKET ENTRIES

A

DIST/OFFICE	YR.	DOCKET NUMBER	FILING DATE			J	N/S	C	R	DEMAND OTHER	JUDGE NUMBER	JURY DEM	DOCKET NUMBER
			MO.	DAY	YEAR								
207	1	75 1420	08	28	75	4	19				0718	P	

PLAINTIFFS

DEFENDANTS

BOSSOM, JOSEPH

JOSEPH BOSSOM

BOSSOM, NAOMI &amp; ANO.

NAOMI BOSSOM and STANLEY E.  
KOOPER

## CAUSE

28 USC 1332--BREACH OF AGREEMENT IN PAYMENT OF CHILD SUPPORT CONDITIONS  
ON THE PART OF THE DEFTS.

## ATTORNEYS

## FOR PLTFF:

Gelbwaks & Pollack  
299 Broadway  
New York, N.Y. 10007  
732-2540

## FOR DEFT:

STANLEY E. KOOPER  
16 Court Street  
Bklyn, N.Y. 11241  
U.5-2324
☐ CHECK  
IF CASE WAS  
FILED IN  
FORM

DATE

FILING FEE PAID  
RECEIPT NUMBER

CD NUMBER

CARD

ASB

APAS ARW SUBSEP

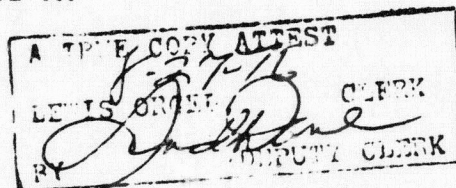


## DOCKET ENTRIES

B

J. BOSSOM V. N. BOSSOM &amp; ANO.

DATE	NR.	PROCEEDINGS
08-28-75		Complaint filed. Summons issued. (1)
9-19-75		Summons returned & filed/Executed. (2)
9/22/75		ANSWER of deft Stanley E. Kooper filed. (3)
9/22/75		Answer of Naomi Bossom filed. (4)
5/4/76		Notice of Motion for Summary Judgment in Favor of Pltff, ret. 5/14/76 filed (5)
5/4/76		Memorandum of Law filed. (6)
5-13-76		Notice of cross-motion ret. 5-14-76 with defts memo of law in opposition to pltff's motion for summary judgment and memo of law to dismiss pltff's complaint filed. (7/8/9)
5-14-76		Before COSTANTINO, J.- Case called for pltff's motion for summary judgment Motion argued Decision reserved
5-18-76		Affidavit in opposition to cross motion for dismissal filed (10)
5-18-76		Supplemental memorandum of law filed. (11)
6-1-76		By COSTANTINO, J.-Memorandum & Order dtd 6-1-76 dismissing the case. The Clerk is directed to enter judgment. p/c (12)
6-2-76		JUDGMENT dtd 6-2-76 dismissing the case filed. (13)
6-24-76		Notice of appeal filed. Copy mailed to C of A. (14)
7-12-76		Civil appeal scheduling order filed. (15)
7-22-76		Undertaking for costs on appeal filed. (16)
8-9-76		Civil appeal scheduling order filed. (17)
8-27-76		Above record certified & handed to Michael Moskowitz for delivery to C of A. ---



## NOTICE OF MOTION FOR SUMMARY JUDGMENT (Filed May 4, 1976)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x

JOSEPH BOSSOM,

Plaintiff,

-against-

NAOMI BOSSOM and STANLEY E.  
KOOPER,

Defendants.

----- x

NOTICE OF MOTION FOR  
SUMMARY JUDGMENT IN  
FAVOR OF PLAINTIFF

Civil Action No.  
75 C 1420

(M.A.C.)

S I R :

PLEASE TAKE NOTICE that upon the affidavit of JOSEPH BOSSOM, duly sworn to the 12th day of March, 1976, annexed hereto, and the affidavit of I. MILES POLLACK, duly sworn to the 3rd day of May, 1976, annexed hereto, and upon the summons, complaint, the answers of the defendants, and upon all the papers and proceedings heretofore had herein, plaintiff will move this Court before the Honorable Mark A. Constantino, United States District Court Judge, at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, County of Kings, City and State of New York, on the 14th day of May, 1976, at 10:00 A.M., pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in the plaintiff's favor and against the defendants, granting the relief requested in plaintiff's complaint upon the ground that there is no genuine issue as to any material facts with respect to the allegations of the



complaint herein and that plaintiff is entitled to judgment on the complaint as a matter of law, and for such other and further relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE that the defendants are required pursuant to the Rules of this Court, to serve answering affidavits, if any, at least three (3) days prior to the return date of this motion.

Dated: New York, New York  
May 3, 1976

Yours, etc.

GELBWAKS & POLLACKS  
Attorneys for Plaintiff

By 

I. Miles Pollack  
A Member of the Firm  
Office and P.O. Address  
299 Broadway  
New York, New York 10007  
732-2540

TO: STANLEY E. KOOPER, ESQ.  
Attorney for Defendants  
16 Court Street  
Brooklyn, New York 11241



## AFFIDAVIT OF JOSEPH BOSSOM IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x

JOSEPH BOSSOM,

Plaintiff,

PLAINTIFF'S AFFIDAVIT

-against-

Civil Action No.  
75 C 1420

NAOMI BOSSOM and STANLEY E. KOOPER,

(M.A.C.)

Defendants..

----- x

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NEW YORK    )

JOSEPH BOSSOM, being duly sworn, deposes and says:

1. I am the plaintiff in this action and I have personal knowledge of the facts herein set forth.

2. This affidavit is submitted in support of the plaintiff's motion for summary judgment herein, for the purpose of showing that there is no genuine issue as to any material fact in this action, and that the plaintiff is entitled to judgment as a matter of law.

3. The subject of this action concerns a stipulation which was entered into on April 15, 1974, between the plaintiff and the defendant, NAOMI BOSSOM, and an escrow agreement, signed by the defendant, STANLEY E. KOOPER, on April 15, 1974.

4. The stipulation and the escrow agreement were executed in the Supreme Court of the State of New York, County of



Kings, prior to the commencement of a trial of an action for a divorce between the plaintiff and NAOMI BOSSOM.

5. After entering into the stipulation in the matrimonial action, I withdrew my answer, and NAOMI BOSSOM was granted a judgment of divorce on or about July 1, 1974, and the stipulation and escrow agreement were incorporated in that judgment.

6. Certain provisions in the stipulation, and the escrow agreement in its entirety, are contrary to the public policy of the State of New York, and also are so onerous and so unfair as to be unconscionable; therefore, these provisions, which will be more fully described subsequently herein, are void and unenforceable. The stipulation as a whole is tainted by the inclusion of these provisions and thus should be vitiated in its entirety.

7. There are no genuine issues of fact present in this action. There is no denial that the stipulation agreement, a copy of which is attached and marked Exhibit "1", and the escrow agreement, a copy of which is attached and marked Exhibit "2", which are annexed to the complaint, and made a part thereof, a copy of which is attached and marked Exhibit "3", were executed between the parties herein. The only question which is before the Court is whether, as a matter of law, the provisions of the stipulation and escrow agreement are void and unenforceable as alleged in the complaint herein.

8. The marital home of NAOMI BOSSOM and myself, which is located at 284 Garfield Place, Brooklyn, New York, was



owned as a tenancy by the entirety prior to our divorce and as a tenancy in common subsequently thereto, up to and including the present time.

9. Paragraph 4 of the stipulation deals with the marital home. NOAMI BOSSOM was given exclusive possession of our house until our youngest child reaches the age of twenty-one (21) years, at which time the house is to be sold and the profits from such sale divided equally. There was never any intention that the judgment of divorce have any effect whatsoever on our respective ownership interests in this property.

10. I believe that the reasonable market value of our house is approximately Ninety Thousand (\$90,000.00) Dollars. I also believe that there is presently a mortgage on the house which totals approximately Ten Thousand (\$10,000.00) Dollars. Therefore, my ownership equity in this property is approximately Forty Thousand (\$40,000.00) Dollars.

11. The provisions contained in Paragraph 5 of the stipulation are so onerous, unfair, and unconscionable that they should not be enforced and should be declared void as a matter of law. The operation of this clause would result in the forfeiture of my property and would constitute a penalty which is contrary to the public policy of the State of New York. Paragraph 5 states as follows:

Both paragraph #2 concerning visitation and paragraph 4 concerning house shall be contingent upon the husband paying the full amount he is obligated to pay hereunder. With regard to visitation, there is a dependent covenant with paragraph concerning support payment.



Upon the father's default in any payment the wife shall have the right to refuse the father visitation. Furthermore upon any default by the father in paying the amount he has obligated himself to pay the wife's attorney shall 14 days after default file a deed which the husband has executed this date in person. The filing of the deed shall not relieve the husband's obligation hereunder. The consideration for title shall be past amounts due.

12. In order to satisfy the automatic operation of the penalty provisions contained in Paragraph 5, I executed a quit-claim deed to my interest in the marital home to NOAMI BOSSOM simultaneously with the execution of the stipulation and gave this deed to the defendant, STANLEY E. KOOPER, pursuant to the terms of the escrow agreement.

13. There can be no question that my forfeiture of my interest in the house would result from my default in any payment for a period which lasted fourteen (14) days. Neither sudden illness, hospitalization, unforeseen poverty, accident, mistake, or other reasonable cause for delay would stay the automatic operation of this obvious penalty should such a default in payment take place.

14. The sole purpose of this provision is to provide a penalty for any fourteen (14) day default in payment, regardless of cause or justification, and the attempt to disguise it by stating that the consideration for such a forfeiture will be past consideration due lacks even a nominal degree of sophistication. The shocking result of a default in one



Five Hundred Forty (\$540.00) Dollars payment would be a forfeiture of an ownership interest in the approximate amount of Forty Thousand (\$40,000.00) Dollars. I trust that this shocks the conscience of the Court.

15. As has already been stated, the activation of the provisions contained in Paragraph 5 would result in a penalty; however, the only penalty thus far discussed has been an economic one. The stipulation does not rest at that point. It not only seeks an economic sanction but attempts to mete out emotional sanction as well. Not only may I be made to suffer, by being deprived of the association of my children, but they must suffer regardless of their wants and desires. This onerous result can only be described as unconscionable.

16. The defendants have alleged two affirmative defenses in their answers, copies of which are attached and marked Exhibits "4" and "5". The substance of these defenses is that I had previously elected to proceed in the courts of the State of New York and that this action is therefore barred by the principles of res judicata and election of remedies. These defenses are dealt with in detail in my attorneys' affidavit and in their memorandum of law.

WHEREFORE, this deponent respectfully prays that the motion of the plaintiff for summary judgment granting the relief requested in the complaint be granted.

\_\_\_\_\_  
JOSEPH BOSSOM

Sworn to before me this  
day of March 1976.

\_\_\_\_\_  
Kearney J. [illegible]



## AFFIDAVIT OF I. MILES POLLACK IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - x

JOSEPH BOSSOM,

Plaintiff,

-against-

NAOMI BOSSOM and STANLEY E.  
KOOPER,

Defendants.

- - - - - x

AFFIDAVIT IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT

Civil Action No.  
75 C 1420

(M.A.C.)

I. MILES POLLACK, being duly sworn, deposes and says:

1. I am an attorney and counsellor-at-law admitted to practice in the courts of this state, including this Court, and I am a member of the firm of GELBWAKS & POLLACK, the attorneys for the plaintiff in the above entitled action; and I am fully familiar with all of the facts and circumstances herein. This affidavit is made in conjunction with the plaintiff's affidavit in support of plaintiff's motion for summary judgment herein.

2. The plaintiff's accompanying affidavit sets forth in detail all of the relevant facts involved in this action; therefore, a reiteration of the material and essential facts is unnecessary.

3. In substance the issues now before the Court are purely a matter of law. The sole question to be decided is whether the Stipulation and Escrow Agreement, which are the



subject of this action, are null and void and unenforceable, as contended by the plaintiff, as a matter of law.

4. The legal arguments with respect to the issue noted above have been clearly stated in your deponent's memorandum of law which is being submitted simultaneously with this motion.

5. The manifest unfairness and illegality of the provisions contained in the Stipulation and Escrow Agreement are obvious on their face as clearly demonstrated in plaintiff's affidavit. It is not the purpose of this affidavit to repeat the arguments stated therein, rather your deponent will attempt to show the invalidity of the defendants' two affirmative defenses set forth in their answers.

6. As a first affirmative defense, the defendants state that the dismissal of the prior action brought by the plaintiff in the Courts of the State of New York is res judicata as to the issues raised in this proceeding.

7. As a second affirmative defense, the defendants state that the plaintiff has elected his remedy by litigating the same issues in the Courts of the State of New York.

8. Both these affirmative defenses involve a motion which was made by the plaintiff in the Supreme Court of the State of New York, in the matrimonial action between the plaintiff and the defendant, NAOMI BOSSOM, which sought to resettle the judgment of divorce.



9. The relief requested in said motion was that the judgment of divorce be resettled so as to provide that the Stipulation be merged in the judgment and not survive. The Supreme Court denied plaintiff's motion finding that it was the intent of the plaintiff and the defendant, NAOMI BOSSOM, (the plaintiff in that action) that the Stipulation survive the judgment of divorce and not be merged therein.

10. The motion which was decided in the Supreme Court has no bearing or relationship whatsoever to the relief sought in the action which is now before this Court. Had the said motion been granted and the Stipulation thereby merged in the judgment, then there would have been no need for the present action because the Stipulation would not have had the effect of a separate and individual contract between the parties.

11. There can be no claim of res judicata resulting from the Supreme Court's decision. That Court would have lacked jurisdiction to decide the validity of the Stipulation. It was not sitting as a court of general jurisdiction, but rather it had acquired jurisdiction only with respect to the matrimonial action. The issue as to the validity of the Stipulation could only have been raised in a separate plenary proceeding; thus, not only did the plaintiff not raise the question of validity, but as a matter of law he could not have done so.




12. As to the claim that plaintiff has elected his remedy, this is also completely without basis in fact or in law. The plaintiff sought to resettle a judgment of divorce which he felt did not reflect the intent of the parties thereto. He did not waive his right to question the validity of the Stipulation in a separate plenary action by so proceeding. As previously stated, the plaintiff could not have litigated both issues in the same proceeding.

13. The only logical conclusion which can be reached is that the relief sought in the action before the Supreme Court of the State of New York and in this action are completely different in nature and effect, one involving a question for the matrimonial court and the other involving the essential validity of a contract having no relation whatsoever to the prior matrimonial action.

14. It is respectfully submitted that no triable issue of fact is presented with respect to the issues in this action and that the plaintiff is entitled to judgment for the relief sought in his complaint as a matter of law.

WHEREFORE, your deponent respectfully prays for an order granting the plaintiff's motion in all respects.

  
\_\_\_\_\_  
I. MILES POLLACK

Sworn to before me this

3rd day of May, 1976.



COMPLAINT (Filed August 28, 1975)

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----x

**JOSEPH BOSSOM,**

**Plaintiff,**

**- against -**

**NAOMI BOSSOM and STANLEY E. KOOPER,**

**Defendants.**

-----x

Plaintiff, complaining of the defendants, by his attorney,  
GELBMAN and POLLACK, respectfully shows and alleges:

**FIRST:** That the plaintiff is a resident of the State of  
Maryland, residing at 4108 Maryland Avenue, Bethesda, Maryland.

**SECOND:** That the defendant, NAOMI BOSSOM, is a citizen of  
the State of New York, residing at 284 Garfield Place, Brooklyn,  
New York.

**THIRD:** That upon information and belief the defendant,  
STANLEY E. KOOPER, is a citizen of the State of New York.

**FOURTH:** That there is a diversity of citizenship between  
the plaintiff and the defendants and this action is subject to the  
jurisdiction of this court, and the matter in controversy exceeds  
the sum of Ten Thousand (\$10,000.00) Dollars, exclusive of in-  
terest and costs.

**FIFTH:** That the plaintiff and the defendant, NAOMI BOSSOM,

were married on September 19, 1934, in the City and State of New York.

SIXTH: That there are three children born of the aforementioned marriage, whose names and dates of birth are as follows: JACK, born August 26, 1936; LUCY, born April 22, 1960; and; CLARON, born December 22, 1965.

SEVENTH: That a judgment of divorce was granted to the defendant, NAOMI BOSSOM, on or about July 1, 1974, dissolving the said marriage.

EIGHTH: That on or about April 13, 1974, the date of the trial of the action for a divorce, the plaintiff and the defendant, NAOMI BOSSOM, entered into a stipulation, a copy of which is attached and made a part hereof, which was incorporated in the said judgment of divorce.

NINTH: That pursuant to Paragraph 6 of the said stipulation, the plaintiff agreed to pay the defendant, NAOMI BOSSOM, the sum of Five Hundred Forty (\$540.00) Dollars per month for the support and maintenance of their three aforementioned children.

TENTH: That pursuant to Paragraph 3 of the said stipulation, the plaintiff agreed to pay the tuition and other expenses of attending college for each child commencing when the child reaches the age of 18 years. In the event that the child resides away from the defendant's, NAOMI BOSSOM'S, residence, then the



plaintiff's support obligation, as stated in Paragraph 6, is reduced by one-third.

**ELEVENTH:** That pursuant to Paragraph 4 of the said stipulation, the defendant, NAOMI BOSSOM was given exclusive possession of the marital home, 284 Garfield Place, Brooklyn, N.Y., which was owned by the plaintiff and the defendant, NAOMI BOSSOM, as tenants by the entirety before the said divorce and which was, and still is, owned by them after the said divorce as tenants in common. At the time that their youngest child reaches the age of 21, years the house is to be sold and the proceeds of such sale divided equally.

**TWELFTH:** That pursuant to Paragraphs 2 and 7 of the said stipulation, the plaintiff and the defendant, NAOMI BOSSOM, provided for the plaintiff to have visitation with their three children.

**THIRTEENTH:** That pursuant to Paragraph 3 of the said stipulation, the plaintiff and the defendant, NAOMI BOSSOM, agreed that the visitation rights under Paragraph 2 and the provisions with respect to the marital home under Paragraph 4 are contingent upon the plaintiff making the full support payments as stated in the stipulation.

**FOURTEENTH:** That pursuant to Paragraph 5 of the said stipulation, the plaintiff's aforementioned visitation rights are a dependent covenant with his support obligation, and that upon the

plaintiff's default in any payment, the defendant, NAOMI BOSSOM, has the right to refuse visitation.

FIFTEENTH: That pursuant to Paragraph 5 of the said stipulation, upon any default by the plaintiff in making any of the aforesaid support payments, the defendant's, NAOMI BOSSOM's attorney shall, 14 days after the default, file a deed which the plaintiff has executed in favor of the defendant, NAOMI BOSSOM. The deed conveys the plaintiff's interest in the said marital home to the defendant, NAOMI BOSSOM.

SIXTEENTH: That pursuant to Paragraph 5 of the said stipulation, the filing of the said deed shall not relieve the plaintiff of any of his support obligations under the stipulation.

SEVENTEENTH: That the plaintiff executed the said deed on or about April 15, 1974.

EIGHTEENTH: That the said deed was and still is held by the defendant, STANLEY E. KOOPER, the attorney for the defendant, NAOMI BOSSOM.

NINETEENTH: That at the time of the signing of the said stipulation, the defendant, STANLEY E. KOOPER, signed an escrow agreement, a copy of which is attached and made a part hereof, wherein he agreed to act as escrowee for the said deed and to hold the said deed for four years and to file the said deed upon notice from the defendant, NAOMI BOSSOM, that the plaintiff has



been in default under the terms of the said stipulation for more than 14 days.

**TWENTY-THIRD:** That the provision in Paragraph 3 of the said stipulation which gives the defendant, NAOMI ROSSOM, the right to refuse visitation in the event of a default in his payments by the plaintiff, is contrary to the law of the State of New York and is contrary to public policy and is null and void and of no effect.

**TWENTY-FOURTH:** That the provision in Paragraph 3 of the said stipulation, which states that the attorney for the defendant, NAOMI ROSSOM, shall file the aforesaid deed in the event of a default by the plaintiff in making payments pursuant to the terms of the stipulation is a forfeiture or penalty; that by reason thereof, such provision is contrary to the law of the State of New York and is contrary to public policy and is null and void and of no effect.

**TWENTY-FIFTH:** That upon information and belief the value of the said marital home is approximately Ninety Thousand(\$90,000.00) Dollars.

**TWENTY-SIXTH:** That upon information and belief there is a mortgage on the said marital home in the approximate amount of Ten Thousand (\$10,000.00) Dollars.

**TWENTY-SEVENTH:** That in the event that the plaintiff is

unable to make payments under the terms of the said stipulation

and is in default for a period exceeding 14 days and as a result of which he forfeits his one-half interest in the said marital home, then such forfeiture would be so onerous and so unfair as to be unconscionable and therefore it should not be enforced.

**TWENTY-FIFTH:** That the dependent provisions of Paragraph 5 of the said stipulation are so patently illegal and unfair that the said stipulation as a whole is tainted and permeated by illegality and unfairness and is void and unenforceable.

**WHEREFORE,** the plaintiff demands judgment against the defendants declaring that the stipulation entered into between the plaintiff and the defendant, NAOMI BOSSOM, and the escrow agreement signed by the defendant, STANLEY E. KOOPER, are null and void and of no effect and direction the defendant, STANLEY E. KOOPER, to return the deed, which was executed by the plaintiff, to the plaintiff and declaring that the deed is null and void and of no effect, together with such other and further relief as to this Court may seem just and proper in the premises, together with the costs and disbursements of this action.

**GELEWAKS & POLLACK**  
Attorneys for Plaintiff  
Office & P.O. Address  
299 Broadway  
New York, New York 10007



## STIPULATION

- 1) Custody of infants to N. B.
2. Visitation at Father's Place ~~alternately~~ each month for a weekend, said weeks to be the 3rd full week each month. Mother to pay transportation to Father's residence 6 times a year. Grandfather to provide no funds other than Berksider mayed. Husband to pay for ~~6 weeks travel~~ transportation 6 times a year. If child not at mother's residence then mother's obligation for transportation for visitation <sup>over</sup>
3. after child reaches 18 years, agrees to pay for tuition for college, transportation to and from work, board & allowance provided the child resides away from the mother's residence and in that case the father shall.



redem payment made  
 hereunder by 1/2 commencing  
 Oct 1, ~~19~~ of the year  
 the enter valley  
 in the event that the  
 child attends a tuition  
 free school

and reside at the mother's  
 residence than the father  
 shall not be entitled to  
 a  $\frac{1}{3}$  reduction.

- 4 The mother shall have sole  
 and exclusive possession  
 of the marital home until  
 the youngest child reaches the  
 age of 21 at which time  
 the house shall be sold  
 and the proceeds divided  
 equally & all income from  
 house past present and  
 future shall belong to wife  
 without any accounting



5 Both paragraphs # 2 Concerning  
 Visitation and Paragraph 4  
 Concerning ~~the~~ House ~~is~~ <sup>is</sup> said  
 he collected upon the husband  
 paying the full amount, he  
 is obligated to pay hereunder  
 with regard to visitation it  
 is a dependent covenant  
 under paragraph concerning  
 support pmt. upon the father's  
 default in any payment the  
 wife shall have the right  
 to refuse the father visitation.  
 Forfeiture upon any default by  
 the Father in paying

The grantee is not obligated  
 himself to pay the wife's  
 attorney's fees. & long after  
 the default of a deed  
 which the husband has executed  
 this date in favor

The filing of the deed  
 shall not relieve the  
 husband's obligation hereunder  
 to consideration for title  
 shall be past amounts due



6. The husband agrees to pay \$540 per month for the support + maintain of the children. This amount shall be reduced as heretofore mentioned. The husband as long as he has not separated shall have the children as dependant.
7. as long as Husband not in default, and children and Mrs. Bessie Connor H. shall have children from 1 week to 1 was over the summer.

Husband represent that his gross earnings at this are \$24,000 <sup>annually</sup>. Husband represents he was being terminated on June 29, 1974. That thereafter Husband represent he will be earning

the sum of \$9000 per annum gross.

A. J. Bessie



## ESCROW AGREEMENT

4/1/74  
 Int. / Stop

Stanley Ekoper agrees to  
 act as escrow for a deed  
 delivered to him this date.  
 He shall hold same for  
 four years

Both parties signing hereto  
 shall hold Stanley Ekoper  
 harmless

That upon notification  
 by Mrs. Bosson that  
 her husband is in default  
 under the terms of a signature  
 entered into in open court  
 and said default continuing  
 for more than 14 days Stanley  
 Ekoper shall file the deed  
 without notice to any  
 party hereto.

Stanley Ekoper

Agreed and consented to

Wm. Wm.

J. R. Brown  
 Thos. Bosson



ANSWER OF NAOMI BOSSOM (Filed September 22, 1975)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JOSEPH BOSSOM,

Plaintiff,

-against-

NAOMI BOSSOM and STANLEY E. HOOPER,

Defendants.

VERIFIED  
ANSWER

Civil Action File No.  
79C 1420

-----X  
Defendant, NAOMI BOSSOM, answering plaintiff's complaint, alleges:

FIRST: Denies each and every allegation contained in paragraphs 'FOURTH', 'ELEVENTH', 'TWENTIETH', 'TWENTY-FIRST', 'TWENTY-SECOND', 'TWENTY-THIRD', 'TWENTY-FOURTH' and 'TWENTY-FIFTH'.

AS AND FOR AN AFFIRMATIVE DEFENSE

SECOND: That plaintiff has litigated the same issues presented to this Court in the Courts of the State of New York, in which Courts plaintiff's action was dismissed; that said dismissal is res judicata as to the issues raised in this proceeding.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

THIRD: That plaintiff has litigated the same issues in the Courts of the State of New York and by said litigation in the Courts of the State of New York the plaintiff elected his remedy.

WHEREFORE, defendants demand judgment against the plaintiff

dismissing plaintiff's complaint.

Yours, etc.  
STANLEY E. KOOPER, Esq.  
Office and P.O. Address  
16 Court Street  
Brooklyn, New York 11241  
Attorney for Defendants



ANSWER OF STANLEY E. KOOPER (Filed September 22, 1975)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JOSEPH BOSSOM,

Plaintiff,

VERIFIED ANSWER

-against-

Civil Action File No. 75C 1420

NAOMI BOSSOM and STANLEY E. KOOPER,

Defendants  
-----X

Defendant, STANLEY E. KOOPER, Esq., answering plaintiff's  
complaint, alleges:

FIRST: Denies knowledge or information sufficient to form a  
belief as to the truth or falsity of the allegations contained in paragraphs  
"FIRST", "FOURTH", "FIFTH", "TWENTY-SECOND" and "TWENTY-THIRD".

SECOND: Denies each and every allegation contained in paragraphs  
"TWENTIETH", "TWENTY-FIRST", "TWENTY-FOURTH" and "TWENTY-FIFTH".

AS AND FOR AN AFFIRMATIVE DEFENSE

THIRD: That plaintiff has litigated the same issues presented  
to this Court in the Courts of the State of New York, in which Courts plaintiff's  
action was dismissed, that said dismissal is res judicata as to the issues raised  
in this proceeding.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FOURTH: That plaintiff has litigated the same issues in the  
Courts of the State of New York and by said litigation in the Courts of the  
State of New York the plaintiff elected his remedy.

WHEREFORE, defendant demands judgment against the plaintiff  
dismissing plaintiff's complaint.

Yours, etc.  
STANLEY E. KOOPER  
Office and P.O. Address  
10 Court Street  
Brooklyn, New York 11241  
Attorney for Defendants



## NOTICE OF CROSS MOTION FOR DISMISSAL OF COMPLAINT(Filed May 14, 1976)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JOSEPH BOSSOM,

Plaintiff,

-against-

NAOMI BOSSOM and STANLEY E. KOOPER,

Defendant.  
-----X

Judge Mark A. Constantino

Civ 75 C 1420

NOTICE OF CROSS MOTION

S I R :

PLEASE TAKE NOTICE that upon the pleadings herein and upon plaintiff's motion by way of Notice of Motion for summary judgment in plaintiff's favor and against defendants, granting relief requested in plaintiff's complaint, and exhibits upon which said motion is made, a cross motion will be made by the defendants pursuant to Rule 12(b)(1) of the Federal Rules of Civil Practice, upon the argument of said motion for summary judgment, returnable at the United States District Court for the Eastern District of New York, before Honorable Mark A. Constantino, at 225 Cadman Plaza East, County of Kings, City and State of New York, on the 14th day of May 1976 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing plaintiff's complaint together with such other and further relief as to this Court as may seem just and proper in the premises.

Dated: Brooklyn, New York  
May 12, 1976

Yours, etc.  
STANLEY E. KOOPER  
Attorney for Defendants  
16 Court Street  
Brooklyn, New York 11241  
855-2324

TO: GELBWAKS & POLLACKS  
Attorneys for Plaintiff  
I. Miles Pollack, of Counsel  
299 Broadway  
New York, New York 10007



## AFFIDAVIT OF STANLEY E. KOOPER IN SUPPORT OF CROSS MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
JOSEPH BOSSOM,

Plaintiff,

AFFIDAVIT IN SUPPORT OF  
CROSS MOTION TO DISMISS

-against-

NAOMI BOSSOM and STANLEY E. KOOPER,

Defendants.  
-----x

STATE OF NEW YORK )  
COUNTY OF KINGS ) s.s.:

STANLEY E. KOOPER, Esq., being duly sworn, deposes and says:

1. I am the attorney for NAOMI BOSSOM, and a named defendant in these proceedings and I make this affidavit in support of defendants' motion to dismiss plaintiff's complaint under Rule 12(b)(1) of the Federal Rules of Civil Procedure.

BACKGROUND

2. The plaintiff, JOSEPH BOSSOM, and the defendant, NAOMI BOSSOM, were married September 19, 1954, in the City and State of New York. There are three children of the marriage; namely, JACK, born August 26, 1956; LUCY, born April 22, 1960 ; and CIARON, born December 22, 1965.

On July 1, 1974 the parties were divorced by a decree of divorce, granted by Honorable Justice Thomas R. Jones in the Supreme Court of the State of New York, County of Kings.

By the terms of the divorce decree, the defendant herein, NAOMI BOSSOM, was awarded exclusive possession of the marital home until the youngest child reached the age of twenty-one years, at which time the house would be sold and the proceeds divided equally.



At the time the divorce action was pending JOSEPH BOSSOM had, for a substantial period of time, failed to contribute to the support of his wife and children. In settlement of NAOMI BOSSOM's claim for support and to insure continued support a stipulation of settlement was executed by the parties and incorporated in the final judgment of divorce.

At the time the stipulation was executed, a deed executed April 15, 1974 was transferred to the defendant, STANLEY E. KOOPER, Esq., to hold in escrow.

On May 22, 1975 plaintiff, JOSEPH BOSSOM, commenced a proceeding in the Supreme Court of Kings County to resettle the judgment of divorce and for a downward modification of the support provisions of the judgment of divorce. This motion is pending in Supreme Court, Kings County.

On August 28, 1975 plaintiff commenced this action to declare the stipulation between plaintiff, JOSEPH BOSSOM, and defendant, NAOMI BOSSOM, null and void.

#### GROUND FOR DISMISSAL

3. Plaintiff, JOSEPH BOSSOM, has clearly commenced this action in Federal Court in order to use the Federal Court system against the New York State Court system.

Plaintiff submitted to the jurisdiction of the New York Court and could assert this cause of action to declare the stipulation null and void in the very proceeding he commenced in Supreme Court, Kings County, which is still open and pending.

The conclusion is inescapable that the plaintiff is forum shopping.

It is respectfully submitted that this Court should decline to exercise its jurisdiction in this matter inasmuch as the plaintiff's forum shopping should not be approved.



As a second ground for dismissal it is pointed out to the Court that the stipulation in this matter has been incorporated and made part of a New York judgment of divorce. The Court should therefore further decline to exercise its jurisdiction herein inasmuch as to do so would involve the Court in a domestic relations dispute which does not come within the subject matter jurisdiction of this Court and which matters the Federal Courts have traditionally refrained from adjudicating.

Thirdly, the plaintiff's complaint alleges as the basis for his cause of action that the stipulation is contrary to the public policy of the State of New York. It is respectfully submitted that the issue of the public policy of the State of New York is a matter for determination by the Courts of New York and that inasmuch as plaintiff has commenced a proceeding in Supreme Court for modification of the judgment of divorce this matter of the stipulation and its validity should, likewise, be heard in the local forum.

Further, it is submitted that this Court as a matter of comity should abstain from exercising its jurisdiction inasmuch as to exercise its jurisdiction would involve this Court in the administration of the Domestic Relations Law of the State of New York and would also constitute a collateral attack on a pending State Court proceeding in which no claim of denial of Federal Constitutional rights is alleged.

WHEREFORE, deponent respectfully requests that this action be dismissed.

S/  
STANLEY E. KOOPER, ESQ.

Sworn to before me this  
12 day of May 1976.

S/  
BETTY MURPHY  
Commissioner of Deeds  
City of New York No. 2-2357  
Certificate filed in New York County  
Commission Expires April 1, 1977



AFFIDAVIT OF BERNARD J. JAFFE IN OPPOSITION TO CROSS MOTION FOR DISMISSAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - x

JOSEPH BOSSOM,

Plaintiff,

-against-

NAOMI BOSSOM and STANLEY E. KOOPER,

Defendants.

AFFIDAVIT IN OPPOSITION TO  
CROSS-MOTION FOR DISMISSAL

Civil Action No.  
75 C 1420

(M.A.C.)

- - - - - x

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF NEW YORK                 )

BERNARD J. JAFFE, being duly sworn, deposes and says:

1. I am an attorney and counsellor-at-law admitted to practice in the courts of this state including this Court, and I am associated with the firm of GELBWAKS & POLLACK, the attorneys for the plaintiff in the above entitled action; and I am fully familiar with all of the facts and circumstances herein.

2. The plaintiff has made a motion for summary judgment. The defendants have made a cross-motion for an order dismissing the complaint.

3. The defendants allege that the relief requested in the complaint could have been asserted in the matrimonial proceeding in the Supreme Court of the State of New York.

4. The present action is not a matrimonial action. If the plaintiff had chosen to proceed in the state court, he would have had to have brought an independent action to set aside the separation agreement. He could not have proceeded by making a motion within the matrimonial action. The relief requested in the complaint, if granted, will have no effect whatsoever upon the plaintiff's obligations to his children as set forth in the judgment of divorce. All that will happen is that a provision for an onerous and unconscionable penalty will be stricken.

5. With respect to the defendants' argument that there is now pending a state court action such argument is specious for the reasons stated above and because any matrimonial action in New York remains open until all of the infant issue of the marriage have reached majority and until the ex-wife has remarried. A request for a modification of the judgment of divorce can be made by either party at any time.

6. The matrimonial court is powerless to eliminate the penalty contained in the stipulation, which was incorporated in the judgment of divorce. The defendants' assertion that there was consideration for the penalty is an anomaly in that no consideration can validate a penalty; however, a separate action was still required to eliminate this sword from over the plaintiff's head.



WHEREFORE, your deponent respectfully prays for an order granting the plaintiff's motion in all respects and denying the defendants' cross-motion.

---

BERNARD J. JAFFE

Sworn to before me this  
18th day of May, 1976.

MEMORANDUM AND ORDER BY CONSTANTINO, D.J. (Filed June 1, 1976)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JOSEPH BOSSOM,

Plaintiff,

v.

NAOMI BOSSOM and STANLEY E. KOOPER,

Defendants.

75-C-1420

MEMORANDUM and  
ORDER

JUN 1 1976

-----X  
COSTANTINO, D.J.

This action involves the construction of certain provisions of a stipulation entered into between Mr. and Mrs. Bossom . On July 1, 1974, this stipulation was incorporated into a judgment of divorce granted to Mrs. Bossom. Plaintiff contends that certain provisions of the stipulation are void as against public policy in New York State. Plaintiff has moved for summary judgment; defendants have cross-moved for an order dismissing the complaint pursuant to Fed. R. Civ. P. 12(b)(1).

In a recent case, the United States Court of Appeals for the Second Circuit emphasized that

[t]he policy of our court will remain, the case being otherwise

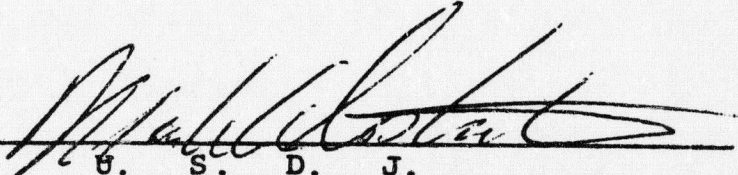


equal in equity, to keep our federal hands off actions which verge on the matrimonial or impinge upon the matrimonial jurisdiction of the state courts.

Kamhi v. Cohen, 512 F.2d 1051,  
1056 (2d Cir. 1975)

Analysis of the facts leads this court to conclude that it should decline to assume jurisdiction in this case. Accordingly, the case is dismissed. The Clerk of the court is directed to enter judgment in accordance with this opinion.

So ordered.



U. S. D. J.



**UNITED STATES COURT OF APPEALS**  
**~~SECOND CIRCUIT~~**

**JOS EPH BOSSOM,**

**Plaintiff-Appellant,**

**- against -**

**NAOMI BOSSOM and STANLEY E. KOOPER,**

**Defendants-Appellees**

*Index No.*

*Affidavit of Service by Mail*

**STATE OF NEW YORK, COUNTY OF**

**ss.:**

I, **Velma N. Howe,** *being duly sworn,*  
*depose and say that deponent is not a party to the action, is over 18 years of age and resides at*  
**298 Macon Street, Brooklyn, New York 11216**

*That on the* **15th** *day of* **September** **19 76** *, deponent served the annexed*

*appendix*

*upon*

**Stanley Kooper**

*attorney(s) for*

**Defendants-Appellees**

*in this action, at* **16 Court Street Brooklyn, N.Y.**

*the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.*

*Sworn to before me, this* **15th**  
*day of* **September** **19 76.**

*Beth A. Hirsch*

*Velma N. Howe*  
**Velma N. Howe**

**BETH A. HIRSH**  
**NOTARY PUBLIC, State of New York**  
**No. 41-4623156**  
**Qualified in Queens County**  
**Commission Expires March 30, 1978**